

governments foster -- not obstruct -- that goal.⁶¹ Yet, across the country, some governmental units are using their legitimate statutory authority to manage public rights-of-ways as a guise for generating revenue or regulating entry. Teligent understands that even carriers that do not use public rights-of-way, such as resellers or fixed wireless carriers, may be assessed right-of-way fees or be subjected to right-of-way franchise requirements. The authority to manage public rights-of-way should not be used to assess fees on companies that do not use the public rights-of-way.

AT&T recently filed a complaint against the City of Austin, Texas for practices by the City which, AT&T alleges, violate, inter alia, the 1996 Telecommunications Act.⁶² The complaint states that Austin's public right-of-way regulation requires the production of extensive information unrelated to the use of public rights-of-way before a carrier can obtain the requisite "municipal consent." AT&T alleges that Austin's regulation constitutes a barrier to entry that exceeds its legitimate authority to regulate its public rights-of-way.⁶³ Moreover, AT&T states that Austin requires a competitive carrier using UNEs to pay franchise fees.⁶⁴ UNE-based carriers rely upon the network

⁶¹ See, e.g., 47 U.S.C. § 253(a).

⁶² See AT&T Communications of the Southwest v. City of Austin, A-97CA-532SS, Complaint for Injunctive Relief and Declaratory Judgment (U.S.D.C. Tex. Western Dist., Austin Div. July 15, 1997).

⁶³ See id. at 11.

⁶⁴ See id. at 12.

facilities of the ILEC and, hence, pay a portion of the ILEC's franchise fees through charges for UNES. The assessment of additional franchise fees by the city on UNE-based carriers constitutes a double payment that, according to AT&T, is anticompetitive and discriminatory.⁶⁵

AT&T's complaint offers just one instance of a competitor facing government-imposed barriers. The litigation of these disputes on a city-by-city or state-by-state basis would result in a tragic waste of resources otherwise available for network construction and rate discounts. Moreover, the sums of money necessary to accomplish this task may be unavailable to smaller carriers. The Commission has a statutory obligation to prevent the erection of barriers by governments⁶⁶ and should use this authority when the bounds of legitimate right-of-way management are exceeded.

⁶⁵ See id.

⁶⁶ See 47 U.S.C. § 253(a).

VII. CONCLUSION

In conclusion, Teligent urges the Commission to ensure that the benefits of telecommunication competition will be available to tenants in multi-unit buildings by adopting the recommendations proposed herein to provide the requisite building access for competitive carriers.

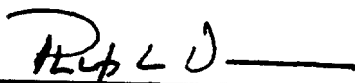
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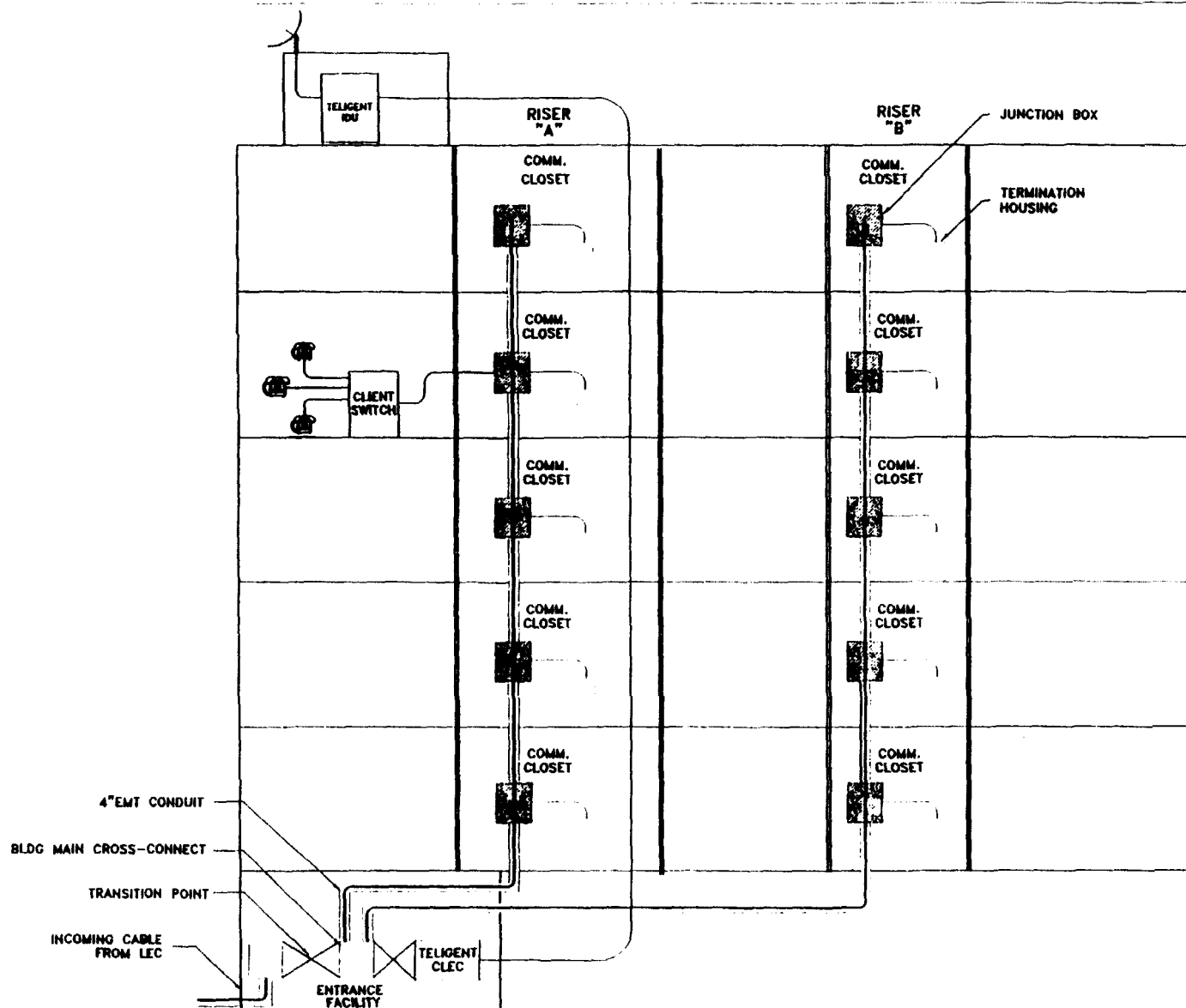
Dated: August 11, 1997

ATTACHMENT A

TO THE
COMMENTS OF
TELIGENT, L.L.C.

CCBPol 97-9

AUGUST 11, 1997



AS-BUILTS	REVISED	ISSUED	NO.	DESCRIPTION	PAGE
M.S.	RC	7/31/77			
DRAWING #					
TEL - PD					
SCALE 1/8" = 1'-0"					
NETION LTD. CONFIDENTIAL					

TELIGENT
ACCESS SITE

NETION
14120H Sullyfield Circle
Chantilly, Virginia 22021
(703) 818-8608

ATTACHMENT B

TO THE
COMMENTS OF
TELIGENT, L.L.C.

CCBPol 97-9

AUGUST 11, 1997



**Guidelines for Property Owners, Developers
and Managers for the Provision of Facilities
within Property Developments for Access
to Public Telecommunications and
Broadcasting Services**

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- **Coordination for New Buildings**
- **Coordination for Existing Buildings**
- **Enquiries and Contacts**

Annex 1

Annex 2

Annex 3

First Issue: May 19

**Guidelines for
Property Owners, Developers and Managers
for the Provision of Facilities
within Property Developments
for Access to
Public Telecommunications and Broadcasting Services**

For Whom are these Guidelines Prepared?

1. These guidelines (which may be referred to as the "Building Access Guidelines") are issued by the Telecommunications Authority (TA) and are intended for property owners, developers and managers (referred to as the "developers" in the rest of these guidelines) in the public and the private sectors, including developers who are statutory or public corporations like the Housing Authority, Mass Transit Railway Corporation, Kowloon-Canton Railway Corporation and the Provisional Airport Authority.

Purpose of these Guidelines

2. These guidelines are to assist developers in the planning and provision of facilities ("access facilities") within their property developments to a standard which the developers consider desirable for their future customers' need. Although the standard of the facilities to be provided is the decision of the developers, there is a public policy that a minimum standard should be met which enables the occupiers to have unimpeded access to public telecommunications and broadcasting services provided in Hong Kong.

Benefits to Developers and Consumers of Providing Adequate Access Facilities for Public Telecommunications and Broadcasting Services

The Value of the Property is Enhanced

3. If adequate access facilities were not provided, the occupiers of the property might not be able to have unimpeded access to the full range of public telecommunications and broadcasting services and this would degrade the value and attractiveness of the property to potential purchasers and occupiers.

Delays, Disruptions and Inconvenience of Having to Add Access Facilities After Completion of Construction are Avoided

4. Generally it is a less satisfactory arrangement for the access facilities to be provided after the completion of the construction of the property as delays, disruptions and inconvenience (such as disturbance of building finishes, opening up of private roads within the property development) may be involved. In some cases, it may even be physically impossible to add the access facilities (such as

be involved. In some cases, it may even be physically impossible to add the access facilities (such as equipment accommodation) which have not been incorporated into the original design. The future occupiers would then suffer permanent constraints in their access to public telecommunications and broadcasting services. It is therefore recommended that adequate access facilities be planned and provided during the construction stage of new property developments.

Hong Kong is Moving to a Multi-Network Operator Environment for Public Telecommunications and Broadcasting Services

5. The Government has announced its policy of introducing competition in the provision of local public fixed telecommunication network services. The exclusive franchise for the local public telephone services by wire granted to Hong Kong Telephone Company Limited (HKTC) under the Telephone Ordinance will expire on 30 June 1995. As from 1 July 1995, HKTC will continue to provide public telephone services in Hong Kong on a competitive basis. The Government will license three more operators to operate local fixed telecommunication networks in competition with HKTC. These new operators are named below:

- Hutchison Communications Limited (HCL)
- New T & T Hong Kong Limited (NT&T)
- New World Telephone Limited (NWT)

The three new operators and HKTC will each be granted a "fixed telecommunication network services (FTNS) licence" under the Telecommunication Ordinance.

6. In addition to the FTNS operators, the Government has already granted a licence to Wharf Cable Limited (WCL) for the operation of subscription television broadcasting services under the Television Ordinance. WCL is given an exclusive right to operate subscription television broadcasting services in Hong Kong until 31 May 1996. Whether additional operators for such services will be licensed after 31 May 1996 will be reviewed by Government.
7. HKTC, HCL, NT&T, NWT and WCL (referred to as the "network operators" in these guidelines) have all been given the "utility" status by the Government. This means that they have the right to install their networks in public streets, unleased land and leased land subject to the necessary approval under the law.

Government Promotes Effective Competition Among the Network Operators to Bring About Benefits to Consumers

8. Effective competition among the four FTNS operators will bring about benefits to the users of telecommunications services. The Government is therefore committed to a policy of ensuring fair competition among the four FTNS operators. Through legislation and licence conditions, the Government will ensure that the four FTNS operators will be treated on a non-discriminatory basis in the access to their customers in property developments.
9. The same policy of fair competition and non-discriminatory access is expected to apply to subscription television broadcasting services if such services are open to competition after 31 May 1996.

Consumers Should Have the Right of Unimpeded Access to Public Telecommunications and Broadcasting Services of Their Choice

10. The occupiers of a property should have non-discriminatory access to the telecommunications and broadcasting services of their choice over the developer's cabling, or over cabling of the network operators installed within the property using the developer's access facilities. The Government intends to review the Telecommunication Ordinance and incorporate suitable provisions to nullify any terms in any lease agreement, deed of mutual covenant or commercial contract that restrict or deprive the right of individual occupiers to access public telecommunications or broadcasting services of their own choice.

Developers Should Provide Access Facilities for Public Telecommunications and Broadcasting Services

11. To enable the occupiers to have direct access to the public telecommunications and broadcasting services in Hong Kong, developers should provide cabling facilities to enable the network operators to install their cables and ancillary equipment to reach their customers in the property. Some developers may choose to provide, in addition to the cabling facilities, cables and ancillary equipment to connect the occupiers of the property to the public telecommunications and broadcasting networks. In these guidelines, cabling facilities and cables and ancillary equipment as collectively known as "access facilities".

Cabling facilities

12. "Cabling facilities" are defined as facilities for the routing, housing, and mounting of cables and ancillary equipment to provide the connections between the public telecommunications and broadcasting networks and the individual premises of the occupiers within the property. These may include -
 - ducts, manholes, trenches and other types of cabling facilities within the boundary of leased land or along private roads,
 - access holes, pipes, conduits, ducts, junction boxes and other types of facilities for cable access into buildings and individual units/premises,
 - risers, ducts, conduits, cable trays, junction boxes and other types of cabling facilities within buildings,
 - accommodation for
 - a. cable termination devices (e.g. main distribution frames (MDF)); and
 - b. transmission and reception equipment;
 and the provision of power supplies, suitable lighting and ventilation,
 - space for the above.

Cables and Ancillary Equipment

13. The cables and ancillary equipment provided by developers provide "through connections" between the "network termination points" of the public networks and the individual premises of the property. They do not provide aggregation or switching of the telecommunications traffic originating from and/or terminating with the occupiers. The occupiers remain to be the customers of the providers of the public telecommunications and broadcasting services which are delivered to the occupiers through the developer-provided cables and ancillary equipment.
14. Under the Telecommunication Ordinance, a licence is required for the establishment or maintenance of any means of telecommunication. The Government intends to exempt from the licensing requirement any cables and ancillary equipment operated by the developers for the provision of "through connections" for the direct access to public telecommunications and broadcasting services. However, in order to implement the Government policy of ensuring that consumers have direct access to public telecommunications and broadcasting services of their choice and to prevent any anti-competitive practice in the operation of the developer-provided cables and equipment, the exemption will be subject to conditions.

Network Operators have Statutory Right of Access to Install Their Networks within Property Developments to Serve Their Customers

15. The Government has the policy to ensure that the occupiers have direct access to public telecommunications and broadcasting services of their choice. Section 14 of the Telecommunication Ordinance is to implement this policy.
16. Under section 14 of the Telecommunication Ordinance, the TA may authorize a licensee under the Ordinance to place and maintain telecommunication lines in, over or upon any land subject to the conditions stated in that section. The Government policy is to authorize a licensee with "utility" status to have access to the "common parts" of a property to install the cables and equipment necessary for the provision of service to occupiers of the property. "Common parts" means all areas within the property development except those areas which are for the exclusive use, occupation or enjoyment of an occupier.
17. The TA has already authorized WCL to install and maintain telecommunication lines in the common parts of private buildings for the provision of the subscription television broadcasting service. The TA will give similar authorization to the four FTNS operators for the provision of the fixed telecommunication network services after the licences have been issued.
18. The network operators are expected to exercise their statutory right of access reasonably, minimizing disruption and inconvenience to the developers and occupiers during the installation and operation of their networks. They are liable for full compensation for any damage suffered by the developers or occupiers in accordance with section 14(2) of the Telecommunication Ordinance.

Access Facilities Should be Shared Among Network Operators

19. As it is often impracticable to provide multiple sets of access facilities within a property development (e.g. access conduits leading into the individual premises of occupiers, wall sockets, etc.), network operators will be encouraged to share access facilities, in particular ducting, on fair commercial and technical terms and conditions.
20. Should operators be unable to reach agreement on shared use through commercial negotiation, the TA may intervene to impose terms and conditions if there is no reasonable alternative, i.e. the

facilities being the subject of sharing constitute a "bottleneck" in the provision of access to the customers. In requiring shared use, the TA will have due regard to the interests of the network customers and the operators, and to the wider public interest. The regulatory framework with regard to the sharing facilities is given under General Condition No. 31 (reproduced in Annex 1) of the FTNS Licences and section 20A of the Television Ordinance (Annex 2).

Access Facilities Should be Made Available to Network Operators on a Non-Discriminatory Basis

There should be No Exclusive Deals or Restrictive Agreements

21. No access facilities installed and maintained by a developer should be reserved by the developer for the exclusive use of a particular network operator so as to preclude other operators to have access to the occupiers of the property where those access facilities could reasonably be utilized by those other operators.

There Should be no Discriminatory Treatment

22. If a developer decides to provide only cabling facilities within the development, all network operators should be allowed access to the cabling facilities for the installation of their cables and equipment to respond to the demand of their customers in the property.
23. If a developer also provides cables and ancillary equipment, all network operators should have access to the cables and ancillary equipment to provide services to the occupiers.

There Should be no Access Charge for Cabling Facilities

24. Under the current legislation, the developers are not entitled to impose an access charge on the network operators for the use of the cabling facilities already provided as part of the property, or for the space for the installation of such cabling facilities, for the installation of cables and equipment which are reasonably necessary for the provision of service to occupiers within the property and some incidental functions. In practice, the costs for the provision of such cabling facilities are expected to be passed on to the purchasers or occupiers of the property in a similar manner as facilities for other utility services (i.e. electricity, water and gas) are provided. The Government considers that this approach is appropriate given the benefits the occupiers of the property, rather than the other consumers outside the property, derive from the use of the cabling facilities within that particular property, and accordingly, the Government will maintain this approach in the new multi-operator environment.

Access Should be Granted for Rollout of Networks

25. Although the three new FTNS operators (see paragraph 5) are not expected to commence service until July 1995, they need to plan and install their networks outside and within property developments well before the service commencement date. The access facilities provided in accordance with these guidelines should therefore be made available to the three new operators as well as the other two existing ones as and when such facilities become available.

Cables and Ancillary Equipment Operated by Developers should be Interconnected with Public Networks on a Non-Discriminatory Basis

26. The cables and ancillary equipment operated by developers should be open for interconnection with the public networks on a non-discriminatory basis so that occupiers of the property can have access to the public telecommunications and broadcasting services of their choice. Under section 36A of the Telecommunication Ordinance, the TA has powers to determine the terms and conditions, including technical and financial terms and conditions, for the interconnection between any cables and ancillary equipment operated by the developers and the public telecommunications and broadcasting networks outside the property.
27. The terms and conditions for the interconnection with cables and ancillary equipment provided by the developers should first be negotiated between the network operators and the developers. If a commercial agreement cannot be reached within a reasonable period, the TA may make a determination of the terms and conditions of the interconnection under section 36A of the Telecommunication Ordinance. If the TA is called upon to make a determination under section 36A of the Telecommunication Ordinance, he will determine the financial terms based on the recovery of all relevant costs (including an appropriate cost of capital) attributable to the interconnection.
28. For the reason stated in paragraph 24, developers are encouraged to adopt the same arrangement as for cabling facilities and pass the costs for the provision of cables and ancillary equipment on to the purchasers or occupiers of the property in a similar manner as facilities for other utility services (i.e. electricity, water and gas) are provided.

The Developers Should Consult and Coordinate with the Network Operators in the Provision of Access Facilities

Planning Adequate Access Facilities

29. The access facilities should meet certain technical standards in terms of size, capacity, technical parameters, quality and safety standards. Compliance with these technical standards will be one of the conditions for the supply of the public telecommunications and broadcasting services to the property.
30. The TA will develop and promulgate a code of practice to establish the technical standards for the access facilities in consultation with the industry. This code of practice will specify as a design requirement for new buildings certain minimum requirements for access facilities within each new building, which will be related to the size of the building and the anticipated number of occupiers which will need to be served by the network operators. While these design requirements should be sufficient in most building environments, the special character of a particular development may require more or different access facilities, and accordingly there should be a process for consultation between the developer and the network operators for each new development.

Coordination for New Buildings

31. As part of the planning of a property development, the developer should notify all network operators of the development and ask the operators to provide their requirements for access facilities. The developer should provide copies of the relevant plans or drawings to the network operators as appropriate. The network operators will coordinate the requirements among themselves and provide the developer with the consolidated requirements for the access facilities. The developers should discuss and agree with the network operators the requirements for access facilities and then incorporate the requirements into the design.

32. If agreement on access facilities cannot be reached on a commercial basis after a reasonable period of active negotiation, the parties involved may seek the assistance of OFTA.
33. As stated in paragraphs 15 to 18, the network operators have statutory right of access. Therefore if developer-provided access facilities prove inadequate, the network operators may exercise their statutory right of access to install their own cabling facilities, cables and ancillary equipment directly to the customers thereby bypassing the developer-provided cables and ancillary equipment.

Coordination for Existing Buildings

34. All network operators have a non-discriminatory right of access to existing cabling facilities in a property and any cables and ancillary equipment owned or operated by the developer. The owners or managers of existing buildings should, where practicable, allow all network operators to have access to existing access facilities of the property on a non-discriminatory basis.
35. Should the existing access facilities be inadequate to meet the requirements of the network operators, upon receipt of any request from network operators for the installation of additional access facilities, the owners or managers should consider whether similar requests from other network operators could be entertained in the future. If there are constraints with allowing other network operators to have separate access facilities, the owners or managers should ask the requesting network operator to coordinate its requirements with the other network operators. In case of difficulty, the assistance of the OFTA may be sought.
36. Under section 14 of the Telecommunication Ordinance, the owners, developers or managers of existing buildings are not entitled to charge for the space to be provided for the additional access facilities. If the access facilities provided by the owners, developers or managers are not adequate to serve the occupiers in the building, the network operators may also install their own access facilities in exercise of their right of access under section 14 of the Telecommunication Ordinance. The network operators are required to compensate the landowners for any damage caused in the installation or operation of the access facilities.

Enquiries and Contacts

37. The TA, supported by the Office of the Telecommunications Authority (OFTA), is responsible for the regulation of telecommunications services and implementation of the telecommunications policy explained later in these guidelines. Any question concerning these guidelines may be directed to:

Telecommunications Engineer (Advisory and Support)
Office of the Telecommunications Authority
29/F Wu Chung House
213, Queen's Road East
Wanchai, Hong Kong

Telephone: 2961 6632
Fax: 2803 5113

38. The contacts in the network operators concerning access facilities are given in Annex 3.

18 May 1995

To Annex

Telecommunications Authority

General Condition 31 of FTNS Licence

Provision, use and sharing of certain facilities

31. (1) Where the Authority reasonably forms the opinion that it is in the public interest that certain types of facilities ought to be provided, used or shared by more than one licensee or the Hong Kong Telephone Company Limited, he may issue directions requiring the licensee to co-ordinate and co-operate with any other licensee, the Hong Kong Telephone Company Limited or any other authorized person in respect of such provision, use or sharing of any such facility. The licensee shall comply with such directions. Prior to forming any opinion and issuing any direction under this paragraph, the Authority will provide a reasonable opportunity for the licensee, the Hong Kong Telephone Company Limited and any other interested parties to make representations on the matter to the Authority.

(2) In considering the public interest pursuant to paragraph (1), the Authority will take into account

- a. where the facility is a bottleneck;
- b. whether the facility can be reasonably duplicated or substituted;
- c. the existence of technical alternatives for the facility;
- d. whether the facility is critical to the supply of service by the licensees;
- e. whether the facility has available capacity having regard to the current and reasonable future needs of the licensee to which the facility belongs;

whether joint use of the facility encourages the effective and efficient use of telecommunications infrastructure; and

- f. the costs, time penalties and inconvenience to the licensees and the public of the alternatives to the shared provision and use of the facility.

(3) Where a fixed telecommunication network service licensee, the Hong Kong Telephone Company Limited or another person authorized by the Authority reasonably requests to share a facility, the licensee shall endeavour to come to an agreement with the requesting party on the terms and conditions, including but not limited to providing for fair compensation to the licensee for the provision, use or sharing of any such facility. If an agreement cannot be reached within a reasonable time and the Authority requires sharing pursuant to paragraph (1), the terms and conditions shall be determined by the Authority.

(4) For the purposes of this General Condition, "facility" means -

- a. ducts, pits, tunnels and manholes;

- a. ducts, pits, tunnels and manholes;
 - b. towers, masts, poles and antennae;
 - c. land, buildings and ancillary equipment at sites on which radiocommunications facilities have been established;
 - d. reasonable space within the licensee's, or the Hong Kong Telephone Company Limited's, exchange buildings or other sites for the purposes of locating equipment of another licensee required to establish interconnection between the licensee's and that other licensee's or the Hong Kong Telephone Company Limited's network at that exchange or site;
 - e. other telecommunication or ancillary installations, including the in-building risers, cable trays and cable entry points into buildings, reasonably necessary for the efficient provision and establishment of fixed telecommunication networks.
-

Annex 2

Section 20A of Television Ordinance**1. The Telecommunications Authority may direct any licensee -**

- a. to provide such transmission equipment, standby generators, towers, air-conditioning and fire-fighting equipment, buildings, ducts and other facilities (hereinafter referred to as "facilities") as the Telecommunications Authority may specify;
- b. in such manner as may be specified by the Telecommunications Authority -
 - i. to co-ordinate; and
 - ii. to co-operate with any other licensee or any other person who establishes or operates any means of telecommunication as may be specified by the Telecommunications Authority in,

the sharing of any of the facilities provided, regardless of whether they have been provided, or are intended to be provided, by the licensee, or any other licensee or such other person referred to in subparagraph (ii).

2. A licensee may be required -

- a. by a direction given by the Telecommunications Authority under sub-section (1); or
 - b. by a term or condition inserted in its licence for that purpose, to share the expenses incurred in connection with the planning, development, installation, testing, operation, maintenance and removal of any of the shared facilities.
-

CERTIFICATE OF SERVICE

I, Gunnar D. Halley, do hereby certify that on this 11th day of August, 1997, copies of the foregoing "Comments of Teligent, L.L.C." were delivered by hand to the following parties:

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Gunnar D. Halley

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Implementation of Section 703(e))
of the Telecommunications Act)
of 1996)
)
Amendment of the Commission's)
Rules and Policies Governing)
Pole Attachments)

CS Docket No. 97-151

COPY

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September 26, 1997

SUMMARY

Access to utilities' rights-of-way will play an important role in enabling meaningful local competition to develop. Utility rights-of-way constitute essential facilities. Section 224 accomplishes the traditional antitrust goal of mandating the provision of access to essential facilities in order to avoid the impairment of the development of competition. The Commission must give the strongest and broadest effect to this goal so as to promote to the fullest extent the development of competition in accordance with the goals of the 1996 Telecommunications Act.

Moreover, the term "right-of-way" is not defined in the Communications Act nor do cases interpreting the term present a clearly accepted definition. Nonetheless, it is apparent that "rights-of-way" encompass a broad range of property interests. This should counsel the Commission to avoid a narrow interpretation of the term for purposes of Section 224 and to recognize that rights-of-way encompass those areas of building rooftops for which utilities enjoy a right of use or access.

The Commission should adopt a methodology for right-of-way access rates to provide the clear prospective guidance that will facilitate negotiations and to reduce the administrative burden of dispute resolution. The differences between pole attachments and access to rights-of-way render the pole attachment formulaic components unsuitable for the right-of-way context. Although the general principles expressed in Section 224 can and should be applied to the right-of-way context, a simple methodology which effectuates those goals should be adopted.

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Implementation of Section 703(e))	
of the Telecommunications Act)	
of 1996)	CS Docket No. 97-151
)	
Amendment of the Commission's)	
Rules and Policies Governing)	
Pole Attachments)	

COMMENTS OF TELIGENT, L.L.C.

Teligent, L.L.C. ("Teligent")¹ hereby submits its Comments in the above-captioned proceeding.²

I. INTRODUCTION

Like poles, ducts, and conduit, the rights-of-way owned and controlled by utilities are essential facilities, access to which is a critical component for the development of local competition. Through Section 224, Congress granted the Commission substantial authority to extend to competitors the ubiquitous access previously available only to incumbent monopolists. The Commission must not unnecessarily restrict the use of this pro-

¹ Teligent was formerly known as Associated Communications, L.L.C.

² Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, Notice of Proposed Rulemaking, FCC 97-234 (rel. August 12, 1997) ("Notice").